

530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name JUNIEL, Jr. RICHARD JAMES
(Last) (First) (Initial)

Prisoner Number V18808

Institutional Address 475-750 RICE CANYON ROAD
P.O. BOX 750 SUSANVILLE, CA 96217-0750

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RICHARD JUNIEL, Jr.

(Enter the full name of plaintiff in this action.)

vs.

T. FELKNER, WARDEN

(Enter the full name of respondent(s) or jailor in this action)

C 07 4542

Case No.
(To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

**RMW
(PR)**

Read Comments Carefully Before Filing In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

- 1 -

new
07-4542-RMW

FILED
AUG 31 2007
RICHARD W. WIENING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 I. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
13 County Superior Court, Oakland):

14 Alameda County Superior Court

Oakland, California

15 Court

Location

16 (b) Case number, if known C145236A

17 (c) Date and terms of sentence December 15, 2003

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes ☒ No ☐

20 Where?

21 Name of Institution: HIGH DESERT STATE PRISON

22 Address: P.O. Box 3030, Susanville, CA 96127

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Murder (Cal. P.C. 187); Gun Enhancement (Cal. P.C. 12022.53(d)); GBI CLAUSE (CAL. P.C.

27 12022.53(d), 12022.53(c), 12022.53(b)); UNLAWFUL FIREARM ACTIVITY

28 (CAL. P.C. 12021(e)); POSSESSION OF ASSAULT WEAPON (CAL. P.C. 12280(b)).

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☒ No ☐

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? Yes ☒ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐

(b) Preliminary hearing Yes ☒ No ☐

(c) Time of plea Yes ☐ No ☒

(d) Trial Yes ☐ No ☒

(e) Sentencing Yes ☐ No ☒

(f) Appeal Yes ☒ No ☐

(g) Other post-conviction proceeding Yes ☐ No ☒

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 2003 Result: Conviction aff'd. 2/16/06

Supreme Court of California Yes ☒ No ☐

Year: 2006 Result: Petition denied. 6/14/06

Any other court Yes ☐ No ☒

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes ☒ No ☐

(c) Was there an opinion? Yes ☒ No ☐

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes ☐ No ☒

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☐ No ☒

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

1 a. _____
 2 b. _____
 3 c. _____
 4 d. _____
 5 Result: _____ Date of Result: _____

6 III. Name of Court: _____
 7 Type of Proceeding: _____
 8 Grounds raised (Be brief but specific):
 9 a. _____
 10 b. _____
 11 c. _____
 12 d. _____
 13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____
 15 Type of Proceeding: _____
 16 Grounds raised (Be brief but specific):
 17 a. _____
 18 b. _____
 19 c. _____
 20 d. _____
 21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No ☒

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
 27 support each claim. For example, what legal right or privilege were you denied? What happened?
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: THROUGHOUT THE COURSE OF THIS CASE'S INVESTIGATION
6 AND TRIAL, THE OAKLAND POLICE DEPARTMENT PLANTED AND TAMPERED
7 WITH SPECIFIC ALLEGED CRIMINAL EVIDENCE THAT WAS USED TO
8 CONVICT ME AT TRIAL, INCLUDING A GUN SHELL CASING, AN
9 ASSAULT WEAPON (PEOPLE'S EXHIBIT ONE) AND A GUN MAGAZINE
10 (PEOPLE'S EXHIBIT 1A). THE TRIAL COURT MISHANDLED AND LOST
11 EVIDENTIARY ITEMS AS WELL INCLUDING PEOPLE'S EXHIBIT 17C.
12 SUPPORTING FACTS: OFFICER PETER HIPPERT OF THE OAKLAND
13 P.D. TESTIFIED AT TRIAL THAT HE IN FACT UNLAWFULLY REMOVED
14 A GUN SHELL CASING FROM THE CRIME SCENE FOR AN EXTENSIVE
15 AMOUNT OF TIME, THEN FINALLY PLACED IT BACK WHERE HE
16 ORIGINALLY FOUND IT AND BEFORE THE CRIME SCENE COULD BE
17 CONTAINED OR INVESTIGATED BY PROPER CRIME SCENE
18 INVESTIGATING PERSONNEL. OFFICER ROBERT NOAN OF THE
19 OAKLAND P.D. TESTIFIED AT TRIAL THAT HE INDEPENDENTLY
20 LOCATED AN ASSAULT WEAPON AND (CLIP) MAGAZINE BY
21 HIMSELF IN AN UNOCCUPIED AREA OF THE DEFENDANT (CO.)
22 AVA McDONALD'S RESIDENCE WHILE CARRYING OUT A SEARCH.
23 (CONTINUED ON PAGE # 6A).

If any of these grounds was not previously presented to any other court, state briefly which

24 grounds were not presented and why:

25 GROUND ONE AND TWO WERE NOT ARGUED IN THE FIRST DISTRICT
26 APPELLATE COURT BECAUSE MY COURT APPOINTED ATTORNEY ARGUED
27 TRIAL RECORD ERROR. GROUND THREE WAS NOT ARGUED IN THE FIRST
28 DISTRICT BECAUSE I WAS NOT AWARE AT THAT TIME OF ITS EXISTENCE IN
29 THE TRIAL RECORD.

1 OFFICER JOLAN TESTIFIED HE TOUCHED THIS PURPORTED EVIDENCE
2 IN ITS PLACE BEFORE IT COULD BE CONTAINED BY EVIDENCE
3 TECHNICIAN PERSONNEL. IT IS APPARENT THAT BOTH OFFICERS'
4 HUPPERT AND JOLAN'S CLAIM OF ACCIDENTALLY TOUCHING AND
5 TAMPERING WITH SUCH CRUCIAL EVIDENTIARY ITEMS INTRODUCED
6 AT TRIAL, IS AN ATTEMPT TO EXPLAIN AND COVER UP FOR
7 POSSIBLE FINGERPRINTS IDENTIFIABLE TO THESE OFFICERS HAD
8 ANY FINGERPRINTS BEEN LIFTED OR LOCATED ON THIS EVIDENCE.
9 OFFICERS ANTWAN JONES AND SCOTT OLTHOFF OF THE OAKLAND
10 P.D. BOTH TESTIFIED AT TRIAL THAT ON MARCH 4, 2003 THEY
11 WERE AMONGST SEVERAL OFFICERS THAT CONDUCTED A HIGH
12 RISK SECURITY CAR (TRAFFIC) STOP AND THOROUGH INVENTORY
13 SEARCH OF THE VEHICLE DESCRIBED AS A POSSIBLE SUSPECT
14 VEHICLE OCCUPIED BY BOTH MYSELF AND (CO-)DEFENDANT ANA
15 McDONALD. THE CAR STOP AND SEARCH OF THE VEHICLE
16 RESULTED IN NO ARREST OR INDICIA OF ANY POSSIBLE
17 CRIMINAL EVIDENCE BEING LOCATED INSIDE THE CAR. HOWEVER
18 OFFICER CHRISTINE MIDDLETON OF THE OAKLAND P.D. TESTIFIED
19 THAT ON MARCH 6TH, 2003 WHILE PROCESSING THE VEHICLE
20 AGAIN SHE LOCATED A SHELL CASING IN THE CAR THAT HAD
21 NOT BEEN FOUND IN THE PREVIOUS SEARCH. THE TRIAL COURT
22 LOST EVIDENTIARY ITEM PEOPLE'S EXHIBIT 17C. THE TRIAL JUDGE
23 GAVE AN OPINION ON THE RECORD THAT SHE BELIEVED ONE OF
24 THE PROSECUTION WITNESSES' HAD POSSIBLY STOLEN THE ITEM.
25 THE GUN, MAGAZINE AND SHELL CASINGS THAT WERE PLANTED,
26 TAMPERED WITH AND MYSTERIOUSLY LOCATED BY THE OAKLAND P.D.
27 OFFICERS, WERE SUBSEQUENTLY MATCHED AND CONNECTED TO
28

1 ME FOR THE PURPOSE OF AN IMPLICIT CONVICTION.

2 CLAIM TWO: VIOLATION OF MY CONSTITUTIONAL RIGHT TO EFFECTIVE
3 ASSISTANCE OF COUNSEL AT PRELIMINARY HEARING AND ABUSE OF
4 DISCRETION BY DENIED CONTINUANCE AND FORCING MY COUNSEL
5 TO PROCEED UNPREPARED.

6 SUPPORTING FACTS: BEFORE THE PRELIMINARY HEARING BEGAN, MY
7 COUNSEL MOVED FOR A CONTINUANCE. MY COUNSEL INFORMED THE COURT THAT
8 HE HAD RECENTLY COMPLETED A HOMICIDE TRIAL AND HAD JUST RECEIVED A
9 JURY VERDICT AROUND NOON THAT VERY SAME DAY OF MY HEARING. MY
10 COUNSEL INFORMED THE COURT THAT HE HAD NOT HAD ANY CHANCE AT ALL TO
11 REVIEW THE 450-SOME ODD PAGES OF DISCOVERY IN MY CASE, HAD
12 NOT YET BEEN ABLE TO REVIEW AUDIO TAPES, POLICE REPORTS, POLICE
13 STATEMENTS AND INTERVIEWS OF SEVERAL WITNESSES. MY COUNSEL
14 INDICATED AND EXPLAINED TO THE COURT THAT HE HAD NO OPPORTUNITY
15 TO SIT WITH ME TO DISCUSS THE CASE AND DEVELOPE ANY DEFENSE
16 STRATEGY, AND HE FINALLY CONCLUDED THAT HE COULD NOT VIGOROUSLY
17 REPRESENT ME GIVEN THE STATE OF HIS KNOWLEDGE ABOUT THE CASE.
18 WITHOUT ANY EXPLANATION OR OPINION, THE COURT DENIED MY MOTION
19 FOR CONTINUANCE. AS A RESULT, MY COUNSEL WAS INEFFECTIVE AND
20 I WAS ILLEGALLY COMMITTED TO AND BOUND OVER TO THE
21 SUPERIOR COURT.

22 CLAIM THREE: THE JUROR THAT SAT IN SEAT NUMBER 5 ON MY
23 TRIAL COMMITTED MISCONDUCT WITHIN MY TRIAL.

24 SUPPORTING FACTS: JUROR NUMBER 5 INFORMED THE TRIAL
25 JUDGE THAT SHE HAD NOT HEARD THE COURT'S INSTRUCTIONS OR NOT
26 DISCUSSING THE CASE OF MY TRIAL. JUROR NO. 5 ADMITTED TO THE
27 TRIAL JUDGE THAT SHE DISCUSSED THE CASE WITH HER HUSBAND,
28

1 AND THAT SHE HAD SPOKE TO A FRIEND OVER THE PHONE ABOUT MY
 2 ETHNIC RACE (SHE TOLD HER FRIEND THAT I WAS BLACK). JUROR
 3 NO. 5 TOLD THE TRIAL JUDGE THAT SHE AND THREE DISMISSED JUROR'S
 4 DISCUSSED WITH EACH OTHER HOW THEY ALL FELT ABOUT THE CASE (A
 5 PRESUMPTION OF MY GUILT) AND SHE DESCRIBED ONE OF THE
 6 DISMISSED JUROR'S AS ACKNOWLEDGING THAT THEY WERE NOT SUPPOSED
 7 TO BE ENGAGED IN SUCH CONVERSATION. JUROR NO. 5 TOLD THE
 8 TRIAL JUDGE THAT SHE HAD FORGOTTEN TO ADMIT ON THE JURY
 9 QUESTIONNAIRE THAT SHE HAD A RELATIONSHIP WITH A COURT REPORTER
 10 WHO FORMALLY SERVED IN MY TRIAL DEPARTMENT. JUROR NO. 5 HAD
 11 DESCRIBED THE COURT REPORTER AS HER NEIGHBOR, BABYSITTER AND
 12 FRIEND. JUROR NO. 5 INDICATED THAT SOMEHOW THE COURT REPORTER
 13 HAD KNOWN (IN ADVANCE) THAT JUROR NO. 5 HAD BEEN SELECTED FOR
 14 JURY DUTY, AND THAT THE COURT REPORTER ASKED HER ABOUT THE
 15 NATURE OF THE CASE AND ASKED THE NAME OF THE PRESIDING TRIAL
 16 JUDGE, TO WHICH JUROR NO. 5 TOLD HER. THE TRIAL JUDGE APPEARED TO
 17 EXPRESS CONCERN OF THIS JUROR'S ABILITY TO SERVE. AND ALTHOUGH
 18 THIS JUROR HERSELF EXPRESSED HER OWN DOUBT TO PRESIDE AS THE
 19 JURY PANEL, THE TRIAL JUDGE STILL FAILED TO TAKE THE PROPER STEPS
 20 TO EXCISE THIS JUROR. I HAD NO KNOWLEDGE OF ANY OF THIS
 21 INFORMATION AT ALL UNTIL I PERSONALLY RECEIVED MY TRIAL RECORD
 22 YEARS AFTER MY CONVICTION. AT THE TIME JUROR NO. 5 CAME
 23 FORWARD WITH THIS INFORMATION, MY COUNSEL WAIVED MY PRESENCE
 24 AND KNOWLEDGE OF THIS ISSUE ENTIRELY. JUROR NO. 5 WAS NOT
 25 HONEST IN PROVIDING INFORMATION WITHIN HER JURY QUESTIONNAIRE.
 26 AS A RESULT, I WAS CONVICTED BY A PERSON ON A JURY
 27 PANEL WHO CLEARLY VIOLATED TRIAL REGULATIONS AND EXPRESSED
 28

1 RACIAL BIAS AGAINST ME IN DISCUSSIONS ABOUT THIS CASE WITH
 2 EXERCISED JURORS AND SOCIAL FRIENDS.
 3 CLAIM FOUR: MY TRIAL VIOLATED MY RIGHT TO DUE PROCESS UNDER
 4 THE FIFTH AMENDMENT BECAUSE MY TRIAL WAS IMPROPERLY JOINED
 5 WITH THE TRIAL OF AN ADVERSE CO-DEFENDANT WITH ANTAGONIZING,
 6 IRRECONCILABLE DEFENSES.

7 SUPPORTING FACTS: JOINDER VIOLATES DUE PROCESS IF IT
 8 RESULTS IN PREJUDICE SO GREAT AS TO DENY A DEFENDANT A FAIR
 9 TRIAL. IMPROPER JOINDER IS MY TRIAL ALLOWED MY CO-DEFENDANT
 10 TO ADMIT A MASSIVE AND STAGGERING AMOUNT OF OTHER ACTS, BAD
 11 CHARACTER, AND OTHER CRIMES' EVIDENCE AGAINST ME THAT WOULD
 12 NOT HAVE BEEN ADMISSIBLE AT A SEPERATE TRIAL. A SMALL
 13 PARTIAL LIST OF THE INADMISSIBLE EVIDENCE IS SET FORTH IN
 14 MY PETITION FOR REVIEW AT PAGES 15 THROUGH 18.

15 CLAIM FIVE: MY TRIAL COURT COMMITTED NUMEROUS ERRORS UNDER
 16 EVIDENCE CODE SECTIONS 1101, 352 AND VIOLATED MY FEDERAL
 17 DUE PROCESS RIGHTS BY ADMITTING AND ALLOWING EVIDENCE OF
 18 ALLEGED PRIOR BAD ACTS AND BAD CHARACTER.

19 SUPPORTING FACTS: THROUGHOUT MY TRIAL, THE JUDGE ALLOWED
 20 EVIDENCE OF TESTIMONY FROM MY CO-DEFENDANT AND OTHERS'
 21 CAUSED IS MY CO-DEFENDANTS DEFENSE THAT I WAS A DRUG
 22 DEALER, THAT I PERPETUATED DOMESTIC VIOLENCE, ACTS OF RAPE,
 23 SPOUSAL ABUSE AND CHILD ABUSE UPON MY CO-DEFENDANT AND HER
 24 SON. EVIDENCE WAS PRESENTED THAT I RECEIVED SEXUAL FAVORS
 25 FROM MY CO-DEFENDANTS SISTER IN EXCHANGE FOR DRUGS,
 26 THAT I HAD PREVIOUSLY WOKEN MY CO-DEFENDANT UP OUT OF HER
 27 SLEEP WITH A GUN POINTED AT HER HEAD AND CAUSED HER THE
 28 ENEMY, THAT I CONTINUOUSLY CHEATED AND COMMITTED

1 INFIDELITY WITH OTHER WOMEN, THAT I WAS IN A GANG, AND SO
 2 FORTH. EVIDENTIARY ITEM PEOPLES EXHIBIT 43 CONTAINED SEVERAL
 3 ITEMS WITHIN A MANILA ENVELOPE INCLUDING PRIOR CALIFORNIA YOUTH
 4 AUTHORITY BEHAVIORAL AND DISCIPLINARY REPORTS AS WELL AS DELINQUENT
 5 JUVENILE COURT MATTERS AND ARREST REPORTS WHICH THE TRIAL JUDGE
 6 RULED ALL OUT AS INADMISSIBLE. THE MANILA ENVELOPE CONTAINING
 7 THESE ITEMS WERE OFFERED BY THE PROSECUTION FOR THE SOLE
 8 PURPOSE OF PREJUDICE BEFORE THE JURY, AND TO PROVE THAT I
 9 LIVED AT MY CO-DEFENDANTS RESIDENCE, WHERE IT WAS LOCATED
 10 BY POLICE DURING A SEARCH. THE PREJUDICIAL EFFECT SERIOUSLY
 11 OUTWEIGHED ANY PROBATIVE VALUE IN THIS EVIDENCE ITEM.
 12 OVER MY OBJECTION THE COURT STILL ADMITTED THE PREJUDICIAL
 13 ITEM INTO EVIDENCE, WHICH WAS EXPOSED TO THE JURY DURING
 14 DELIBERATIONS. THE ADMISSION OF ALL OF THIS HIGHLY INFLAMMATORY
 15 EVIDENCE RENDERED MY TRIAL UNFAIR AND MY CONVICTION INVALID
 16 UNDER THE DUE PROCESS CLAUSE.

17 CLAIM SIX: MY TRIAL VIOLATED MY RIGHT TO ATTORNEY-CLIENT
 18 PRIVILEGES (WHICH INCLUDES SIXTH AMENDMENT RIGHTS TO COUNSEL
 19 AND OTHER FEDERAL CONSTITUTIONAL PROVISIONS) BY ADMITTING
 20 INTO EVIDENCE HIGHLY PREJUDICIAL AND PRIVILEGED INFORMATION
 21 WITHIN A LETTER TO MY ATTORNEY WITHOUT CONDUCTING THE
 22 REQUISITE 402 HEARING.

23 SUPPORTING FACTS: MY CO-DEFENDANTS' COUNSEL CONFRONTED
 24 ME ON CROSS-EXAMINATION AT TRIAL WITH A LETTER I HAD
 25 WRITTEN TO MY ATTORNEY, WHICH CONTAINED IDEAS AND CRUCIAL
 26 INFORMATION ABOUT THE CASE FOR A POTENTIALLY DIFFERENT
 27 DEFENSE AT TRIAL. WHEN CONFRONTED WITH THE LETTER, I
 28 MADE A PRIMA-FACIE CLAIM OF ATTORNEY-CLIENT PRIVILEGE

1 AND INFORMED THE COURT I HAD NOT GIVEN ANY CONSENT OR
 2 PERMISSION TO THE INVESTIGATOR (WHO I WAS COMPELLED TO SHARE
 3 WITH MY ADVERSE CO-DEFENDANT) TO DISCLOSE ANY OF THE LETTERS
 4 CONTENTS TO ANYONE, AND I OBJECTED TO THE USE OF MY
 5 PRIVILEGED LETTER. THE TRIAL JUDGE ALLOWED MY CO-DEFENDANTS
 6 COUNSEL TO BASICALLY TESTIFY AND DISPUTE MY CLAIM OF THE
 7 PRIVILEGE IN OPEN COURT BEFORE THE JURY, AND THE COURT
 8 ALLOWED THE LAWYER TO IMPEACH AND ASK ME QUESTIONS ABOUT
 9 ALL OF THE INFORMATION WITHIN THE LETTER. AT THE NEXT RECESS
 10 THE TRIAL JUDGE SUBSEQUENTLY SUSTAINED MY OBJECTION AND
 11 CLAIM OF ATTORNEY - CLIENT PRIVILEGE, YET THE COURT TOOK NO
 12 STEPS OR MADE ANY EFFORTS TO CURE THE ERROR AND
 13 PREJUDICE I SUFFERED BY THE CONFIDENTIAL INFORMATION EXPOSED
 14 TO THE JURY. THIS CONTRIBUTED TO THE JURIES DETERMINATION OF
 15 MY CREDIBILITY OF TESTIMONY.

16 CLAIM SEVEN: MY TRIAL COURT VIOLATED MY RIGHT TO DUE
 17 PROCESS AND MY RIGHT TO PRESENT A DEFENSE BECAUSE THE
 18 TRIAL JUDGE ALTERED AND TOTALLY CHANGED HER INITIAL RULING
 19 (AFTER I RESTED THE PRESENTATION OF MY DEFENSE) AND PLACED
 20 UNREASONABLE LIMITATIONS ON MY RESPONSE AND DEFENSE TO
 21 THE CHANGED RULING.

22 SUPPORTING FACTS: AT THE BEGINNING OF TRIAL, THE COURT
 23 RULED THAT MY CO-DEFENDANT WOULD NOT BE ALLOWED TO
 24 PRESENT EVIDENCE OF PRIOR BAD ACTS AND BAD CHARACTER.
 25 I PROCEEDED IN THE TRIAL BASED ON THAT RULING AND I
 26 RESTED MY DEFENSE. AFTER I DID, THE TRIAL JUDGE CHANGED
 27 HER MIND AND ALLOWED MY CO-DEFENDANT TO PRESENT A MASSIVE
 28 AMOUNT OF EVIDENCE OF PRIOR BAD ACTS AND BAD CHARACTER.

1 IRONICALLY, THE TRIAL JUDGE BANNED ME FOR THE EXTENDED DURATION
 2 OF THE TRIAL AND RUSHED ME THROUGH OUT THE REMAINDER OF THE
 3 TRIAL. THE COURT ORDERED ME TO FINISH MY CROSS-EXAMINATION
 4 OF THE CO-DEFENDANT, WHO NOT ONLY SPENT THE ENTIRE TRIAL
 5 ACCUSING ME OF COMMITTING THE CRIME FOR WHICH I WAS STANDING
 6 TRIAL, BUT OF OTHER MURDER AND CRIMINAL ACTS, AND I WAS NOT
 7 ALLOWED TO ASK PROBATIVE IMPEACHMENT QUESTIONS. I WAS ONLY
 8 ALLOWED A FEW MINUTES TO RESPOND TO ADVERSE REBUTAL WITNESSES
 9 AFTER MY TESTIMONY, AND ONE HOUR OF CLOSING ARGUMENT TO
 10 RESPOND TO THE PROSECUTION'S 14 WITNESSES AND MY ADVERSE CO-
 11 DEFENDANTS' 10 WITNESSES. FIFTY-THREE MINUTES INTO MY
 12 CLOSING ARGUMENT, THE TRIAL JUDGE INTERRUPTED ME IN OPEN
 13 COURT AND ORDERED ME TO BRING MY CLOSING TO A CONCLUSION.
 14 I WAS PRESSURED, FOSTRATED INTENTIONALLY BY THE TRIAL COURTS
 15 ABUSE OF MY RIGHT TO PRESENT MY DEFENSE EFFECTIVELY.
 16 CLAIM EIGHT: VIOLATION OF MY FIFTH AMENDMENT RIGHTS TO
 17 REMAIN SILENT (DUE PROCESS). THE TRIAL JUDGE FORCED ME,
 18 IN VIOLATION OF BROOKS V. TENN (406 U.S. 605) TO DECLARE IN
 19 ADVANCE IF I WOULD TESTIFY.
 20 SUPPORTING FACTS: THE TRIAL JUDGE REQUIRED ME TO TELL
 21 HER (BEFORE ALL OF THE EVIDENCE AGAINST ME WAS IN) IF I WAS
 22 PLANNING TO TESTIFY. I OBJECTED AND ATTEMPTED TO EXPLAIN
 23 TO THE COURT THAT I HAD NOT YET DECIDED, AND I WANTED TO
 24 WAIT AND WEIGH OUT WHAT ADVERSE WITNESS TESTIMONY AND OTHER
 25 ACTS EVIDENCE WOULD AMOUNT TO. THE TRIAL JUDGE EXPRESSED HER
 26 FRUSTRATIONS THAT SHE COULD NOT FINALIZE JURY INSTRUCTIONS
 27 BECAUSE OF THE FACT THAT I WANTED TO WAIT UNTIL THE REST
 28 OF THE EVIDENCE WAS IN BEFORE I TESTIFIED.

1 THE TRIAL JUDGE THEN ISSUED A VEILED THREAT TO ME; THAT ALTHOUGH
 2 I COMPLETED THE PRESENTATION OF MY DEFENSE, IT WAS WITHIN
 3 HER DISCRETION TO ALLOW ME TO RE OPEN MY DEFENSE AND PRESENT
 4 SUPPLEMENTAL AND NEW EVIDENCE, AND SHE MIGHT PREVENT ME
 5 FROM DOING SO. I AGAIN OBJECTED, AND THE TRIAL JUDGE TOLD ME TO
 6 GIVE HER A YES OR A NO - DIRECT ANSWER AT THAT MOMENT IF I
 7 WOULD TESTIFY. I HASTILY RESPONDED I WOULD TESTIFY - TO THE
 8 TRIAL JUDGES SATISFACTION, AS WELL AS THE PROSECUTOR'S AND MY
 9 ADVERSE CO-DEFENDANTS. MY DECISION UNDER DURESS TURNED OUT
 10 TO BE EXTREMELY DAMAGING TO MY DEFENSE AND SURELY DID
 11 CONTRIBUTED TO MY CONVICTION. THIS IS A VIOLATION OF MY RIGHTS
 12 UNDER BROOKS V. TENNESSEE.

13 CLAIM NINE: THE TRIAL COURT VIOLATED STATE AND FEDERAL
 14 LAW BY REFUSING TO GIVE AN INSTRUCTION REGARDING THE LESSER
 15 INCLUDED OFFENSE OF MANSLAUGHTER.

16 SUPPORTING FACTS: EVIDENCE WAS PRESENTED AT TRIAL
 17 THAT THERE WERE SEVERAL CONFRONTATIONAL DISPUTES AND FIGHTS
 18 THAT OCCURRED BETWEEN MY CO-DEFENDANT, THE VICTIM, MY CO-
 19 DEFENDANTS SISTER AND THE VICTIM'S NEICE, ALL WITHIN 24 HOURS
 20 OF THE HOMICIDE. THE JURY HEARD THAT THE VICTIM, UNDER THE
 21 INFLUENCE OF ALCOHOL AND CRACK COCAINE AT THE TIME, WALKED
 22 OVER TO MY CO-DEFENDANTS CAR AS MY CO-DEFENDANT POWLED
 23 UP TO PARK IN FRONT OF HER HOME GARAGE AFTER WORK LATE AT
 24 NIGHT. THE VICTIM BEGAN BANGING ON CO-DEFENDANTS CAR WINDOW
 25 AND STARTED MAKING THREATS WITH A KNIFE WHILE CO-DEFENDANT
 26 SAT FRIGHTENED INSIDE HER CAR. THE PROSECUTION'S THEORY OF THE
 27 CASE WAS THAT, THE NEXT DAY AFTER THIS INCIDENT, CO-DEFENDANT
 28 AND I MURDERED THE VICTIM IN RESPONSE TO THAT CONFRONTATION

1 INITIATED BY THE VICTIM. HAD THE JURY BEEN INSTRUCTED ON THE
 2 LESSER INCLUDED OFFENSE OF MANSLAUGHTER, IT IS A VERY
 3 SIGNIFICANT POSSIBILITY THAT THE JURY MAY HAVE FOUND THAT
 4 CO-DEFENDANT AND I (ACTING OUT OF PASSION AND IN RESPONSE
 5 TO THE VICTIM'S THREAT WITH A KNIFE) KILLED THE VICTIM IN AN
 6 ACTUAL - - - ALTHOUGH UNREASONABLE BELIEF IN THE NEED TO
 7 DEFEND CO-DEFENDANT AGAINST IMMINENT PERIL TO LIFE,
 8 GREAT BODILY INJURY OR FROM BEING THREATENED BY THE
 9 VICTIM WITH A KNIFE AGAIN. I WAS THEREFORE ENTITLED TO THE
 10 LESSER INCLUDED OFFENSE AS SUPPORTED BY THE EVIDENCE.
 11 CLAIM TEN: THE TRIAL COURT VIOLATED STATE AND FEDERAL
 12 LAW BY REFUSING TO GIVE CALJIC NUMBER 8.73.

13 SUPPORTING FACTS: FOR THE SAME REASONS THAT IT WAS
 14 REVERSIBLE ERROR AND VIOLATION OF STATE AND FEDERAL LAW TO
 15 REFUSE TO GIVE MANSLAUGHTER INSTRUCTIONS, IT WAS ALSO ERROR
 16 FOR THE COURT TO REFUSE TO GIVE CALJIC 8.73. AS STATED
 17 IN CLAIM NINE, THERE WAS A PREPONDERANCE OF EVIDENCE
 18 INTRODUCED AT TRIAL TO SHOW PROVOCATION SUFFICIENT ENOUGH
 19 THAT THE JURY MIGHT HAVE FOUND THE MURDER TOOK PLACE WITHOUT
 20 DELIBERATION AND PREMEDITATION. CO-DEFENDANT ANA McDONALD
 21 TESTIFIED HERSELF THAT, DESPITE THE ALTERCATION SHE HAD WITH
 22 THE VICTIM THE NIGHT BEFORE, SHE NOR I HAD ANY PLAN TO KILL
 23 THE VICTIM. McDONALD TESTIFIED THAT WHILE SHE AND I WERE
 24 DRIVING ON OUR WAY HOME FROM A STORE, THE VICTIM APPROACHED
 25 OUR CAR AT A STOP LIGHT AND THAT I ASKED THE VICTIM ABOUT
 26 THE CONFRONTATION WITH McDONALD. McDONALD TESTIFIED THAT I
 27 SUDDENLY BECAME ANGRY WHILE TALKING TO THE VICTIM AND JUST
 28

1 STARTED SHOOTING. BASED ON McDONALD'S TESTIMONY, THE JURY
 2 COULD HAVE CONCLUDED THAT I SHOT THE VICTIM ONLY AFTER HAVING
 3 AN EXCHANGE OF HEATED WORDS WITH THE VICTIM - - - THE KIND OF
 4 PROVOCATION SUFFICIENT TO RAISE A REASONABLE DOUBT IN THE
 5 MINDS OF THE JURORS REGARDING WHETHER THE ACCUSED PLANNED
 6 THE KILLING IN ADVANCE, EVEN IF INSUFFICIENT TO REDUCE THE
 7 CRIME TO MANSLAUGHTER. BUT DESPITE THE EVIDENCE AND MY
 8 REQUEST FOR THE INSTRUCTION, THE COURT STILL REFUSED TO GIVE
 9 INSTRUCTIONS OF CALJIC 8.73. AS A RESULT, THE COURT DEPRIVED
 10 ME OF MY RIGHT TO HAVE A COMPLETE SET OF INSTRUCTIONS ON
 11 APPLICABLE LESSER INCLUDED OFFENSES.

12 CLAIM ELEVEN: VIOLATION OF MY CONSTITUTIONAL RIGHT TO DUE
 13 PROCESS BY THE PROSECUTOR'S MISCONDUCT THROUGHOUT THE TRIAL.

14 SUPPORTING FACTS: IN OPENING ARGUMENT, THE
 15 PROSECUTOR VOUCHERED FOR THE EXCELLENCE OF WITNESS LANSING LEE,
 16 WHO WAS OFFERED AS AN EXPERT WITNESS FOR THE STATE LATER IN
 17 THE TRIAL. THAT VOUCHING WAS BASED ON THE PROSECUTOR'S PERSONAL
 18 KNOWLEDGE AND EXPERIENCE (EVIDENCE OUTSIDE THE RECORD).
 19 THE PROSECUTOR TESTIFIED IN OPEN COURT DURING MY CROSS-
 20 EXAMINATION OF STATE WITNESS RICHALDA WILLIAMS. IN
 21 CLOSING ARGUMENT, THE PROSECUTOR VOUCHERED FOR THE FAIRNESS
 22 OF THE JUDGE, THE FAIRNESS OF THE TRIAL, THE FAIRNESS OF
 23 THE PROSECUTOR HIMSELF, THE TRUTHFULNESS OF MY CO-DEFENDANT
 24 ATTORNEY (WHO TESTIFIED IN OPEN COURT WHILE I WAS ON THE STAND),
 25 AND THE PROSECUTOR ALSO VOUCHERED FOR THE EXCELLENCE OF MY
 26 FIRED ATTORNEY. ALL OF THE PROSECUTOR'S VOUCHING WAS BASED ON
 27 HIS OWN OPINION AND PERSONAL KNOWLEDGE GAINED OUTSIDE OF
 28 THE RECORD. THE PROSECUTOR SAID THAT HE, MY CO-DEFENDANTS

1 ATTORNEY AND MY FIRED ATTORNEY WERE ALL JEWEL, THAT THEY GOT
 2 ALONG BECAUSE THEY ALL KNEW ONE ANOTHER FROM OTHER CASES OVER
 3 THE YEARS. THE TRIAL JUDGE STATED DURING ONE OF MY MOTIONS
 4 THAT SHE HAD KNOWN MY FIRED ATTORNEY FOR 30 YEARS AND THAT
 5 HE HAD EXTENSIVE EXPERIENCE. THE TRIAL JUDGE AS WELL AS THE
 6 PROSECUTOR ALL OPENLY STATED THEIR PERSONAL RELATIONS WITH
 7 MY COUNSEL AND ONE ANOTHER. TELLING, IT IS EVIDENT THAT
 8 MY ATTORNEY, MY CO-DEFENDANTS ATTORNEY, THE PROSECUTOR AND TRIAL
 9 JUDGE WERE ALL GOING TO WORK IT OUT TOGETHER FOR THE
 10 STATE AND, WITH RESPECT TO MY FIRED ATTORNEY, NOT IN MY BEST
 11 INTERESTS NOR THE INTERESTS OF JUSTICE. FOR THE PROSECUTOR
 12 TO USE THE OPEN COURT DISPUTE BETWEEN MY CO-DEFENDANTS
 13 ATTORNEY AND MYSELF CONCERNING MY ATTORNEY-CLIENT CLAIM TO
 14 PROVE I WAS A LIAR, WAS VERY REPREHENSIBLE. THE PROSECUTORS
 15 INTENTIONS WERE TO MAKE IT APPEAR THAT, MY OWN ATTORNEY
 16 AND CO-DEFENDANTS ATTORNEY FELT THAT I WAS GUILTY, AND THE
 17 PROSECUTOR DID SO NOT ONLY BY USING THE ATTORNEY-CLIENT
 18 DISPUTE, BUT VOUCHING FOR THE EXCELLENCE OF BOTH MY CO-
 19 DEFENDANTS ATTORNEY (WHO SPENT THE ENTIRE TRIAL TRYING TO SHIFT
 20 BLAME COMPLETELY ON ME) AND MY FIRED ATTORNEY (INCOMPETENT),
 21 BY DOING SO THE PROSECUTOR WAS INTENDING TO APPLY THAT,
 22 BASED ON HIS PERSONAL KNOWLEDGE, MY CO-DEFENDANTS ATTORNEY
 23 WAS TELLING THE TRUTH. IN THE PROSECUTOR'S CLOSING ARGUMENT,
 24 HE SAID (IN PART): I KNOW LORNA BROWN. SHE IS NOT
 25 LYING, NO WAY! (RT2211). OVER MY OBJECTIONS, THE
 26 PROSECUTION ELABORATED ON AND MADE CONTINUOUS COMMENTS
 27 ABOUT MY DECISION TO REPRESENT MYSELF, STATING THAT IT
 28 WAS NO ONE'S FAULT BUT HIDES THAT I MADE AN UNFORTUNATE

1 DECISION TO DO SO. THE PROSECUTOR STATED THAT HE AVOIDS
2 PROSECUTING PEOPLE IN FAIR TRIALS, AND INTENTIONALLY AND
3 CONTINUOUSLY MISSTATED WITNESS TESTIMONY AND EVIDENCE THROUGH
4 OUT THE TRIAL, STATING FALSELY THAT HE COULD HAVE OBJECTED
5 TO MOST OF MY EVIDENCE, BUT HAD CHOSEN TO SIT AND JUST ALLOW
6 MY OTHERWISE INADMISSIBLE EVIDENCE COME ONTO THE RECORD.
7 THE PROSECUTOR COMMENTED ON EVIDENCE THAT WAS NOT
8 INTRODUCED AT TRIAL DURING MY SENTENCING.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 CLAIM TWO: JENNINGS V. SUPERIOR COURT, (67) 66 CAL. 2d 867 -
5 (RIGHT TO DEFENSE AT PRELIMINARY); PEOPLE V. FONTANA, (82) 139 CAL.
6 APP. 3d 326 (EFFECTIVE DEFENSE AT PRELIMINARY); CONTINUE ON 7A.

7 Do you have an attorney for this petition?

Yes _____ No ☒

8 If you do, give the name and address of your attorney:

9 _____
10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

August 24th, 2007

14 Date

[Signature]

15 Signature of Petitioner
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(Rev. 6/02)

1 CLAIM FOUR: J.S. J. LANE, (86) 444 J.S. 438 (PREJUDICIAL JOINER
 2 VIOLATES DUE PROCESS); BEAN J. CALDERON, 163 F.3d 1073, 1084
 3 (9TH CIR. 1998) (SAME); PEOPLE J. MASSIE, (1967) 66 CAL. 2d 899 -
 4 (SAME); CLAIM FIVE: J.S. J. BREINIG, (6TH CIR. 1995) 70 F.3d 850,
 5 853 (OTHER ACTS AND CHARACTER EVIDENCE); J.S. J. JAMAYS, (9TH CIR.
 6 1994) 17 F.3d 1174 (SAME); J.S. J. BRADLEY, (9TH CIR. 1993) 5 F.3d
 7 1317, 1320 (SAME); CLAIM SIX: THOMAS J. SUPERIOR COURT, (2001) 87
 8 CAL. APP. 4TH 738, 740 (ATTORNEY-CLIENT PRIVILEGE); BITTAKER J.
 9 WOODFORD, (4TH CIR. 2003) 332 F.3d 715, 724 N.J. (SAME);
 10 CLAIM SEVEN: HILTON J. MORRIS, (9TH CIR. 1985) 767 F.2d 1443,
 11 1446 - 1447 (RIGHT TO PREPARE AND PRESENT DEFENSE); PEOPLE J.
 12 JENKINS, (2000) 22 CAL. 4TH 900, 1000 (SAME); PEOPLE J. DIAZ, (1984)
 13 195 CAL. APP. 3d 1375, 1383 (SAME); CONDE J. HENRY, (9TH CIR. 1999)
 14 198 F.3d 734, 739 (SAME); CLAIM EIGHT: BROOKS J. TENNESSEE,
 15 (1972) 406 J.S. 605 (FORCED TO DECLARE IN ADVANCE TO TESTIFY);
 16 PEOPLE J. COCCIA, (2002) 97 CAL. APP. 4TH 785, 790 (SAME); BELL J.
 17 STATE, (1989) 66 MISS. 192, 194, S.S.O. 389, (SAME); NIELSEN J.
 18 SUPERIOR COURT, (1997) 55 CAL. APP. 4TH 1150, 1156 (SAME); PEOPLE
 19 J. JONES, (1992) 2 CAL. APP. 4TH 867, 873 (FIFTH AMENDMENT RIGHT
 20 AGAINST SELF-INCRIMINATION); PEOPLE J. VARGAS, (1987) 195 CAL.
 21 APP. 3d 1385, 1391 (SAME); CLAIM NINE: PEOPLE J. LASKO, (2000) 23
 22 CAL. 4TH 101, 108 (LESSER INCLUDED OFFENSE OF MURDER); PEOPLE J.
 23 FLANDEL, (1979) 25 CAL. 3d 668, 681-683 (MOST INSTRUCTIF
 24 SUPPORTED BY THE EVIDENCE); PEOPLE J. MEMRO, (1995) 11 CAL. 4TH
 25 786, 871 (SAME); PEOPLE J. BARTON, (1995) 12 CAL. 4TH 186 (SAME);
 26 CLAIM TEN: PEOPLE J. JAVENTINE, (1946) 28 CAL. 2d 121, 132
 27 (INTENT TO COMMIT WITHOUT DELIBERATION AND PREMEDITATION);
 28 PEOPLE J. WICKERSHAM, (1982) 32 CAL. 3d 307, 329 (SAME);

1 CLAIM ELEVEN: DARDEN J. WAINWRIGHT, (1986) 477 J.S. 168, 181 -
 2 (IMPROPER REMARKS MADE BY PROSECUTOR); PEOPLE J. ESPINOZA, (1992)
 3 3 CAL. 4TH 806, 820 (SAME); J.S. J. LAHORTE, (2d CIR. 1991) 950
 4 F.2d 80, 83 (SAME); PEOPLE J. ANDERSON, (1990) 52 CAL. 3d 453, 479
 5 (JOGGING OUTSIDE OF RECORD); PEOPLE J. CASH, (2003) 28 CAL. 4TH
 6 703, 732 (STATING FACTS IN ARGUMENT NOT IN EVIDENCE); PEOPLE J.
 7 BAIS, (1971) 5 CAL. 3d 839, 848 (STATEMENTS BASED ON EVIDENCE NOT
 8 ADDUCED AT TRIAL); PEOPLE J. MINCEY, (1992) 2 CAL. 4TH 408, 444 -
 9 (SAME); J.S. J. PHILLIPS, (7TH CIR. 1975) 527 F.2d 1021, 1022 -
 10 1023 (MISSTATEMENTS OF LAW BY PROSECUTOR IN CLOSING ARGUMENT).
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